

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

WORCESTER, ss

C.A. NO. 04 CV 40071 NMG

DAMON ASHER (formerly Damon Milhem))

Plaintiff )

)

v. )

)

DISCOVER FINANCIAL SERVICES, INC. )

Defendant )

**PLAINTIFF'S OBJECTION TO DEFENDANT, DISCOVER FINANCIAL SERVICES,  
INC.'S NOTICE TO REMOVE THE CASE TO U.S. DISTRICT COURT**

Now comes the Plaintiff, Damon Asher, and respectfully requests that this Court deny the Defendants' Notice to Remove this case to U.S. District Court; District of Massachusetts, Worcester Division. As grounds for this objection the Plaintiff states as follows:

1. The alleged violations of 15 USCS § 1666 (the Fair Credit Billing Act) pertain to Defendant Discover Financial Services, Inc.'s ("Discover") failure to follow the required procedures for correcting a billing error and by failing to provide documentary evidence to support or substantiate the Defendant's position.
2. Determination of these alleged violations does not involve the interpretation of any Federal law. The required procedures set forth in the Fair Credit Billing Act are defined by simple, concise, and plain wording. As such, the court must simply determine whether those procedures were followed.
3. The issues in this case also involve the application of Massachusetts General Law ch. 93A §9 resulting from the Defendant's failure to follow the procedures and obligations set forth in Massachusetts General Law ch. 140D §§ 29, 32, and 34.
4. Determinations as to these issues require the substantive interpretation and application of

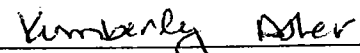
complicated Massachusetts state law. The Massachusetts State Court is more familiar with, and in a better position to understand the history and purpose of, interpret, and apply, these statutes.

5. Additionally, a determination as to these issues would have a profound impact on the rights of recovery of all plaintiffs asserting violations of Massachusetts Consumer Credit and Consumer Protection rights by credit card companies. As such, a Massachusetts State Court should resolve these questions of law.
6. This amount in controversy is less than \$15,000.00. It would be a waste of judicial resources and involve significantly more time and costs if this case were removed to Federal District Court. As a practical matter, taking into consideration the value of the case compared to the time and resources that would be expended, this case should remain in the Massachusetts State Court.

### CONCLUSION

For the above reasons, the Plaintiff respectfully requests that this Court deny the Defendants' Notice to Remove this case to U.S. District Court; District of Massachusetts, Worcester Division, and order that the case remain in Leominster District Court.

Respectfully submitted,  
The Plaintiff, by his attorney,

  
KIMBERLY J. ASHER, ESQ.  
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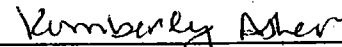
Dated: May 11, 2004

**CERTIFICATE OF SERVICE**

I, Kimberly J. Asher, attorney for the Plaintiff hereby certify that on May 11, 2004, I served a copy of the foregoing **Plaintiff's Objections to Defendant, Discover Financial Services, Inc.'s Notice to Remove the Case to U.S. District Court**, via first class mail by mailing copies thereof, to:

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Dated: May 11, 2004